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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,762	04/23/2001	Valerie Vreeland	23070087120	5972

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EXAMINER

PATTERSON, CHARLES L JR

ART UNIT

PAPER NUMBER

1652

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/840,762

Applicant(s)

VREELAND ET AL.

Examiner

Charles L. Patterson, Jr.

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: none.

Claim(s) objected to: _____.

Claim(s) rejected: 16, 17 and 20-30.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


Charles L. Patterson, Jr.
Primary Examiner
Art Unit: 1652

Continuation of 10. Other: The instant amendment changes "has no more than about 600 amino acids in length" to "has a molecular weight of more than 60kDa". The claim is not limited to an amino acid sequence from 441 to 676 of SEQ ID NO:2 that has enzymatic activity, but rather to a polypeptide that comprises an amino acid sequence that is 90% identical to residues 441-676 of SEQ ID NO:2 "whereas the polypeptide catalyzes [the enzymatic activity and] has a molecular weight of no more than 60kDa". This reads on a larger protein with activity that has a 90% identity with residues 441-676. Nowhere does the specification teach that a polypeptide of 60 kDa having 90% identity with residues 441-676 of SEQ ID NO:2 has enzymatic activity. Page 23, line 24 - page 24, line 16 teaches that proteins having 100% identity to residues 1-676, 62-676 and 238-676 of SEQ ID NO:2 (obtained by noting the amino acid residues corresponding to bp 1, 409 and 937 in Table I) have peroxidase activity in the presence of vanadium. Page 22 teaches that the enzyme of SEQ ID NO:2 is 73.4 kDa in size and that there is a 60 kDa enzyme in *Ascophyllum nodosum*, whose sequence is not given. For these reasons the instant amendment will not be entered and the previous rejection is maintained for the reasons of record.